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HAROLD B. WILLEY,

IN THE

SUPREME COURT OF THE UNITED STATES

No. 488

ANDERSON BROTHERS CORPORATION

Appellant,

vs.

BOARD OF SUPERVISORS OF
WASHINGTON COUNTY, MISSISSIPPI

Appellee

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JURISDICTIONAL STATEMENTS FOR AN APPEAL TO THE UNITED STATES SUPREME COURT

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IN THE

SUPREME COURT OF THE STATE OF MISSISSIPPI

SEPTEMBER TERM, 1954

No. 39,401

ANDERSON BROTHERS CORPORATION

Appellant,

vs.

BOARD OF SUPERVISORS OF WASHINGTON COUNTY, MISSISSIPPI

Appellee

JURISDICTIONAL STATEMENTS FOR AN APPEAL TO THE UNITED STATES SUPREME COURT

The facts in the case are that on January 16, 1953, the Sheriff of Washington County, Mississippi, levied a writ of attachment on certain tangible personal property of the appellant then in the possession of and located upon a lot owned by the appellant in Washington County, Mississippi. The writ was issued, without bond, by the Circuit Court of Washington County, Mississippi, acting through the Clerk thereof, upon the affidavit of the Sheriff and Tax Collector of Washington County, Mississippi, that the appellant was indebted to him as Tax Collector in the sum of $9,586.50. (Record p. 30) In order to release its property from the attachment and to withhold the payment of the sum demanded by the Tax Collector the appellant filed with him a bank guaranty of

the payment thereof dated April 10, 1953, and reserving the right to test the validity of the demand of the Tax Collector. Thereafter and prior to July 1, 1953, the property attached was shipped out of the State of Mississippi. (Record p. 31)

In July, 1953, the Tax Assessor of Washington County, Mississippi, placed the property of the appellant here involved on the 1953 Personal Assessment Roll of Washington County, Mississippi, at an agreed valuation of $249,000.00 for ad valorem taxes thereon for the year 1953. (Record p. 10)

Within the time provided by law, to-wit, at the August, 1953, meeting of the Board of Supervisors of Washington County, Mississippi, the appellant objected to said assessment on the grounds that:

1. There is no statute authorizing the assessment and collection of ad valorem taxes on tangible personal property in the manner said taxes of $9,586.50 were attempted to be assessed and collected.

2. The tangible personal property attempted to be assessed was not kept permanently or for the greater part of the year in Washington County, Mississippi.

3. The tangible personal property attempted to be assessed was not being used in Washington County, Mississippi, on January 1, 1953, in carrying out contract work for a drainage district, a road district, a levee district, bridge building or any other kind of contracting work.

4. The tangible personal property attempted to be assessed did not acquire a taxable situs in Washington County, Mississippi, for the year 1953.

Record pp. 14-22

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At its August, 1953, meeting the Board of Supervisors of Washington County, Mississippi, entered an order, reciting that after hearing the objection of the appellant alleging that said property was not taxable under the law at all, rejecting said objection of the appellant. (Record pp. 22-23)

Within the time and in the manner provided by law the appellant appealed to the Circuit Court of Washington County, Mississippi, from the action of the Board of Supervisors of Washington County, Mississippi. The case was tried by said court upon an agreed statement of facts showing:

1. That the property involved was not in Washington County, Mississippi, permanently or for the greater portion of the year 1953.

2. That the property involved was not being used in Washington County, Mississippi, on January 1, 1953, in carrying out work for a drainage district, a road district, a levee district, bridge building or any other kind of contracting work.

3. That the property involved, together with approximately $750,000.00 of like property, was brought into Washington County, Mississippi, in the fall of 1952 for the temporary purpose of being overhauled and shipped out of the State of Mississippi, said $750,000.00 of like property having been shipped out of the State of Mississippi prior to January 1, 1953.

Record pp. 3-10

The Circuit Court affirmed the action of the Board of Supervisors denying the objection of the appellant to the assessment. (Record pp. 41-42)

Within the time and in the manner provided by law the appellant appealed to the Supreme Court of the State of Mississippi from the decision of the Circuit Court of Washington County, Mississippi. In the Supreme Court the appellant contended that the property involved was not taxable in Washington County, Mississippi, (1) under the general rule that tangible personal property cannot be taxed in a state other than the domicile of the owner unless it has acquired a more or less permanent location there and not merely a transient or temporary one, 51 *Am. Jur. p.* 468, *Taxation,* Section 453; (2) under the decision of the Supreme Court of Mississippi in the case of *State ex rel Knox v. Union Tank Car Co.* 151 *Miss.* 797, 119 *So.* 310, wherein that Court followed the decision of the Supreme Court of the United States in the case of *Marye v. B. & O. R. R. Co.,* 127 *U. S.* 117, 8 *S. Ct.* 1037, 32 *L. Ed.* 94, holding that the situs of tangible personal property is the domicile of the owner and such property is not taxable in a foreign state until such state enacts a statute fixing its taxable situs there; and (3), under the Mississippi statute, *Section* 9747, *Volume 7A, Mississippi Code of* 1942, (*Recompiled*), fixing the taxable situs of tangible personal property in the County where located on the first day of the taxable year provided it shall be kept there permanently or for the greater portion of such year, or if engaged in doing contracting work for drainage districts, for road districts, levee districts or any other kind of contracting work, then in the county where being used in carrying out such contracts on the first day of the taxable year.

On June 14, 1954, the Supreme Court of the State of Mississippi rendered an opinion affirming the judgment of the Circuit Court of Washington County, Mississippi. The opinion was that; "Clearly, the property of appellant

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does not come within any of the classifications set forth in Section 9747, Code of 1942. However, it appears that Section 9747 serves only to determine in which county of the various counties and districts in Mississippi the property will be taxable; and in no manner determines the actual tax liability," but that under the provisions of Section 9760, Code of 1942 (Recompiled) the property of appellant was subject to assessment in Washington County, Mississippi, for ad valorem taxes for the year 1953, because it was located there on the first day of January, 1953. The opinion made no response or reference to the general rule, or to the former decision of the Court, or to the decision of the Supreme Court of the United States, that tangible personal property cannot be taxed in a state other than the domicile of the owner unless it has acquired a taxable situs in such other state. A true copy of the opinion, which is reported in Advance Sheet, 73 So. 2d - No. 1, page 105, Southern Reporter, is hereto attached as Exhibit "A".

Final judgment pursuant to said opinion was entered by the Supreme Court of the State of Mississippi on August 2, 1954, affirming the judgment of the Circuit Court of Washington County, Mississippi, and $506.72 damages thereon. A certified copy of the judgment is hereto attached as Exhibit "B".

Petitioner shows that the jurisdiction upon appeal of the Supreme Court of the United States to review the judgment in this case is provided for by *Section* 1257, 28 *U. S. C. A.* as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being

> **repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."**

in that, the decision of the Supreme Court of the State of Mississippi, that, under the provisions of Section 9760, Mississippi Code of 1942 (Recompiled) and the facts in this case, the property of the appellant acquired a taxable situs in Washington County, Mississippi, for ad valorem taxes for the full year of 1953 because it was located there on the first day of January, 1953, constitutes a denial of the appellant's right of due process under the Fourteenth Amendment to the Constitution of the United States.

***Braniff Airways, Inc. v. Nebraska State Board of Equalization and Assessment, et al, decided June* 1, 1954, *reported in Advance Sheet, Vol.* 74, *No.* 16, *page* 757, *Supreme Court Reporter,* and the decisions cited and therein referred to.

A transcript of *Section* 9474, *Volume* 7, *Mississippi Code of* 1942 (*Recompiled*) and of *Section* 9760, *Volume* 7, *Mississippi Code of* 1942 (*Recompiled*) are hereto attached as Exhibits "C" and "D".

ANDERSON BROTHERS CORPORATION, *Petitioner*

By Philip Mansour
Ernest Kellner
Attorneys

EXHIBIT "A"

IN THE SUPREME COURT OF MISSISSIPPI

No. 39,401

ANDERSON BROTHERS CORPORATION

v.

BOARD OF SUPERVISORS OF WASHINGTON COUNTY

ARRINGTON, *Justice*:

Anderson Brothers Corporation, a foreign corporation, incorporated in the State of Texas, appeals from a judgment of the Circuit Court of Washington County affirming an assessment for ad valorem taxes for the year 1953 against appellant's machinery and equipment located in Washington County on January 1, 1953.

From the agreed facts, it appears that appellant is engaged primarily in the business of laying pipe lines for the transmission of natural gas. In August, 1952 appellant completed a contract in the State of West Virginia and shipped a large quantity of heavy equipment by barge line from West Virginia to its base of operations in Houston, Texas. While this equipment was in transit, appellant secured contracts in Kentucky and Michigan for which the equipment would be needed. In order to save time and transportation charges, the equipment was unloaded at Greenville, Mississippi, where appellant had purchased six acres of land for use in storage and repair of the equipment. From the time of its arrival in September, 1952 the equipment was being constantly stored, repaired, and shipped out January 1, 1953, when there was left in Washington County the property which was assessed to appellant in this suit.

Appellant was doing no work in Mississippi during 1953, and the machinery did not remain at Greenville for

the greater portion of the year. There is no dispute as to the value of the property. On January 16, 1953, the Tax Collector of Washington County, acting upon information that the property was about to be removed from Mississippi, levied a writ of attachment, issued out of the Circuit Court of Washington County, on the affidavit of the sheriff, without bond. Subsequently, the tax collector and the representative of appellant entered into an agreement whereby appellant agreed not to remove its property from the State until security had been posted, which security was later furnished and no further action was taken pursuant to the writ of attachment.

Appellant first contends that it is not liable for the taxes with which it is assessed as the property was not taxable in Washington County, Mississippi. Appellant argues that Section 9747, Code of 1942 (Recompiled), determines the tax liability of a nonresident of this State, and that unless appellant's property can be brought within the provisions of this section, appellant is not liable for the taxes with which it has been assessed. Section 9747 provides:

> "Real property shall be assessed in the county, municipality and district where situated; and all tangible personal property shall be assessed in the county, municipality or district in which the same may be on the day that said tax lien takes effect, provided it shall be kept in such county, municipality or district permanently, or for the greater part of such current year, and the list thereof may be rendered by an agent of the owner. All property subject to taxation not above mentioned shall be assessed in the county, municipality and district where the owner resides, and this shall include poll taxes.

"Provided, however, that all persons, firms and corporations doing contracting work for drainage districts, for road districts, levee districts, bridge building or any other kind of contracting work, shall have all their personal property used in carrying out such contracts assessed in the county and district where such property is being used on the first day of January of each year."

We are unable to agree with appellant in this contention. Clearly, *the property of appellant does not come within any of the classifications set forth in Section* 9747, *Code of* 1942. However, it appears that Section 9747 serves only to determine in which county of the various counties and districts in Mississippi the property will be taxable; and in no manner determines the actual tax liability.

In the instant case, appellant's tax liability is determined by Section 9760, Code of 1942 (Recompiled), which provides:

"Corporations and joint stock companies, how taxed: — The property of each corporation or joint stock company (whether organized under the law of this state or any other state or county) shall be assessed and taxed as that of a person; and the laws, providing for the assessment and collection of taxes on the property of persons, shall apply to the assessment and collection of taxes on the property of corporations and joint stock companies; . . . The president, secretary, or other officer of the same shall render, under oath, the tax list, in its name, of its property, real or personal or both, subject to taxation, to the assessor at the same time that persons are required to render their assessments of their property. *Its land and tangible personal property shall be*

assessed and taxed where situated on the first day of January of the year; . . . " (Emphasis ours)

As will be seen, this section provides that property of a corporation, whether organized under the laws of this state or not, shall be assessed and taxed and its tangible personal property shall be taxed and assessed "where situated on the first day of January of the year."

Appellant is a corporation. The property involved is tangible personal property, and the property was in Washington County, Mississippi, on the 1st day of January, 1953, the year for which the tax is assessed, and hence all of the statutory requirements are fulfilled.

We are of the opinion that under the facts of this case, the tax collector was authorized to seize the property by virtue of Section 9824, Mississippi Code of 1942 (Recompiled). We are further of the opinion that the appellant is liable for the taxes sought to be collected and that the judgment of the circuit court in upholding the validity of the assessment was correct. It follows that the judgment of the court below should be, and it is, affirmed.

AFFIRMED.

Roberds, P. J., and Hall, Kyle, and Ethridge, JJ., concur.

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EXHIBIT "B"

STATE OF MISSISSIPPI

To the Honorable the Circuit Court of Washington County — Greetings:

WHEREAS, on the 14th day of June, 1954 (the same being a day of the regular term of our SUPREME COURT, begun and held in the Court room, in the Capitol, in the City of Jackson, in said State, on the 1st Monday of March, in the year of our Lord, 1954, the following final Judgment was rendered by our SUPREME COURT, to-wit:

ANDERSON BROTHERS CORPORATION

No. 39,401

Vs.

BOARD OF SUPERVISORS OF WASHINGTON COUNTY

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Washington County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 29th day of January 1954 be and the same is hereby affirmed. It is further ordered and adjudged that the appellae do have and recover of and from the appellant the sume of $506.72 being damages at the rate of 5 per centum as allowed by statute, and from the appellant and Philip Mansour and Ernest Kellner, sureties on the appeal bond herein, all of the costs of this appeal to be taxed, etc.,

YOU ARE THEREFORE HEREBY COMMANDED, That such execution and further proceedings be had in

said cause, as according to right and justice, and the judgment of our SUPREME COURT and the law of the land ought to be had.

WITNESS, the Hon. Harvey McGehee, Chief Justice of our Supreme Court; also the signature of the Clerk and the seal of said Court hereunto affixed, at office, at Jackson, this the 2nd day of August, A. D. 1954

TOM Q. ELLIS, *Clerk*

By JULIA KENDRICK, *D.C.*

(SEAL)

STATE OF MISSISSIPPI

COUNTY OF WASHINGTON

I, C. E. Cocke, Clerk of the Circuit Court in and for said County and State, hereby certify that the within and foregoing instrument is a true and correct copy of original mandate as the same appears on file and of record in of the records in my office, at Greenville, Miss.

Witness my hand and official seal, this the 31st day of Aug. A. D. 1954.

(SEAL)

C. E. COCKE
Clerk of the Circuit Court
of Washington County, Miss.

By _____ D.

EXHIBIT "C"

"Sec. 9747. Where persons and property assessed. — Real property shall be assessed in the county, municipality and district where situated; and all tangible personal property shall be assessed in the county, municipality or district in which the same may be on the day the said tax lien takes effect, provided it shall be kept in such county, municipality or district permanently, or for the greater part of such current year, and the list thereof may be rendered by an agent of the owner. All property subject to taxation not above mentioned shall be assessed in the county, municipality and district where the owner resides, and this shall include poll taxes.

Provided, however, that all persons, firms and corporations doing contracting work for drainage districts, for road districts, levee districts, bridge building or any other kind of contracting work, shall have all their personal property used in carrying out such contracts assessed in the county and district where such property is being used on the first day of January of each year.

Sources: Codes, Hutchinson's 1848, ch. 8 art. 16 (6); 1857, ch. 3, art. 14; 1871, sec. 1667; 1880, sec. 472; 1892, sec. 3749; 1906, sec. 4258; Hemingway's 1917, sec. 6891; 1930, sec. 3123.

Cross References: Constitution, sec. 112; Motor Vehicle Taxes, sec. 9352-66.

ANNOTATIONS

Situs of aeroplanes for purposes of taxation. 153 ALR 264.

ATTORNEY GENERAL'S OPINIONS

See Ops. Atty. Gen., section 9745, supra.

JUDICIAL DECISIONS

Under this section, providing that every person shall be assessed in the municipality in which he resides at the time of the assessment, the assessment is to be made where the person actually resides at the time, though he has a residence at another place and votes there. *Millsaps v. Jackson*, 88 M 504, 42 So. 234. Personal property in the hands of a trustee is assessable at his residence or domicile. *Adams County v. Dale*, 110 M. 671, 70 So. 828. By a divided court it was held that a domestic corporation is not liable for taxes on the portion of its capital invested in shares of another domestic corporation. *Robertson v. Mississippi Valley Co.*, 120 M. 159, 81 So. 799. Assessment of gasoline steam shovel under description of 'machinery, tools, implements and equipment' held valid. *Byers Mach. Co. v. Cobb Bros. Constr. Co.*, 182 M 212, 179 So. 565."

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EXHIBIT "D"

"Sec. 9760. Corporations and joint stock companies, how taxed. — The property of each corporation or joint stock company (whether organized under the laws of this state or any other state or county) shall be assessed and taxed as that of a person; and the laws, providing for the assessment and collection of taxes on the property of persons, shall apply to the assessment and collection of taxes on the property of corporations and joint stock company shall be exempt from taxation and shall not be returned for assessment. The president, secretary or other officer of the same shall render, under oath the tax list, in its name, of its property, real or personal or both, subject to taxation, to the assessor at the same time that persons are required to render their assessments of their property. Its land and tangible personal property shall be assessed and taxed where situated on the first day of January of the year; and the accounts, notes, bonds, shares or certificates of stock, bank deposits, rights, money or other intangible property subject to taxation owned by a corporation or joint stock company organized under the laws of this state shall be assessed and taxed at its domicile; but any such intangible personal property, which would be exempt from taxation according to law, if owned by a person shall be exempt from taxation when owned by a corporation or joint stock company and shall not be returned for assessment. Such intangible personal property owned by a corporation or joint stock company organized under the laws of any state or county other than Mississippi shall be exempt from taxation and shall not be returned for assessment. This section shall not apply to persons, firms or corporations assessed by the State Railroad

Assessors or domestic insurance companies; but the shares or certificates of stock issued by a railroad, sleeping car, express, telephone or telegraph company or a freight car line or a railroad equipment company or a domestic insurance company, shall be exempt from taxation in the hands of the stockholder and shall not be returned for taxation by such stockholder."

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DEC 14 1954
HAROLD B. WILLEY, C

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 488

ANDERSON BROTHERS CORPORATION, and
KELLNER & KELLNER, and PHILIP MANSOUR,
Counsel for ANDERSON BROTHERS CORPORATION

versus

BOARD OF SUPERVISORS OF
WASHINGTON COUNTY, MISSISSIPPI.....Appellee

APPEAL FROM THE SUPREME COURT OF
THE STATE OF MISSISSIPPI

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

JOHN E. STONE
State Tax Commission
Woolfolk State Office Building
Jackson, Mississippi
D. H. WAITS
Leland, Mississippi
Counsel for Appellees

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No._____

ANDERSON BROTHERS CORPORATION, and KELLNER & KELLNER, and PHILIP MANSOUR, Counsel for ANDERSON BROTHERS CORPORATION

versus

BOARD OF SUPERVISORS OF WASHINGTON COUNTY, MISSISSIPPI.....Appellee

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

The appellee in the above-entitled cause for his statement in opposition to appellant's "Jurisdictional Statement For An Appeal to the United States Supreme Court", and in support of appellee's motion to dismiss or affirm, respectfully shows the following:

I.

STATEMENT OF FACTS AND ISSUES ON APPEAL

This is an appeal from a decision rendered by the Supreme Court of the State of Mississippi on the 14th day of June, 1954, and reported in Southern Reporter advance sheet at 73 So. (2d) 105. Suggestion of Error was overruled on the 23rd day of July, 1954, and is unreported.

Appellant is engaged principally in the business of laying pipe lines for the transmission of natural gas and in the furtherance of its business owns and operates a large amount of heavy machinery which it moves from place to place as it acquires various contracts. Appellant had constructed pipe lines in Washington County, Mississippi, prior to January 1, 1953.

In August, 1952, appellant completed a contract in West Virginia and shipped, by barge line, approximately fifteen tons of heavy machinery to Houston, Texas. While this machinery was enroute, appellant acquired other contracts, principally in Kentucky, and in order to avoid the cost and delay of reshipment of the equipment from Houston, Texas, to Kentucky, appellant had its machinery reconsigned to Greenville, Mississippi, on September 9, 1952, where appellant had purchased approximately six acres of land for use in storing and repairing said machinery. The machinery was being constantly stored, repaired and shipped out from Greenville, Mississippi, until January 1, 1953, when there was left in Washington County, Mississippi, the machinery which was assessed to appellant in this suit.

About January 8, 1953, the Deputy Tax Assessor of Washington County, Mississippi, having been informed of the location of this machinery in the County; with the aid of an agent of the State Tax Commission, visited the lot in Washington County where the property was stored, where they obtained a list of said property along with its valuation from an agent of the appellant.

Subsequently the Tax Collector of Washington County levied a writ of attachment on the property for the collection of the tax, but after appellant deposited security for the payment of the tax the attachment proceedings were abandoned and appellant was permitted to remove

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the property from the County and the State of Mississippi.

Appellant contested the ad valorem assessment of the property before the Board of Supervisors of Washington County, which resulted in a decision upholding the assessment from which decision appellant prosecuted an appeal to the Circuit Court of Washington County and then to the Supreme Court of the State of Mississippi, all of which tribunals upheld the assessment.

This appeal involves the question of the validity of an ad valorem assessment against appellant for ad valorem taxes due on personal property stored in Washington County, Mississippi, on the tax lien date, which property was being stored for the benefit of appellant.

II.

A FEDERAL QUESTION HAS NOT BEEN PROPERLY RAISED

Appellant in its "Jurisdictional Statement for Appeal to the United States Supreme Court" relies entirely on 28*USCA* 1257 (2) as necessarily it must. The purpose of this statute is to restrict the mandatory jurisdiction of this Court on appeal and to make certain that no judgment of a state court will be reviewed on appeal by this Court unless the highest Court of the state has first been apprised that a state statute is being assailed as invalid on federal grounds, or that the statute as applied is so assailed. In order to support an appeal to this Court, it is necessary that the question of validity of the state taxing statute be either presented to the state court or decided by it. It is not sufficient merely to attack the tax levied or the right to collect the tax which has been levied, or to show that the validity of the tax alone has been considered. The mere objection to an exercise of

authority under a statute whose validity is not attacked cannot be made the basis of an appeal to this court. *Wilson vs. Cook,* 327 U. S. 474, 66 S. Ct. 663, 90 L. Ed. 793.

The Supreme Court of Mississippi in its opinion in this case did not pass on any federal question, nor was any reference or intination to a federal question contained in its opinion, for the reason that none was presented to it. The Assignment of Errors, as filed in the Supreme Court of the State of Mississippi, reflects that two questions were presented to that Court for its decision. The Assignment of Errors in the Supreme Court of Mississippi being as follows:

"1. The property involved in this case is not taxable in Washington County.

"2. The attempted assessment and collection of taxes involved in this case are void."

Certainly the Assignment of Errors in the Supreme Court of Mississippi did not affirmatively present a federal question and did not affirmatively challenge any state statute or the application thereof as being invalid under the provisions of the Fourteenth Amendment to the Constitution of the United States.

It is insufficient to sustain the appellate jurisdiction of this Court, if the question of the validity of the state statute under the Federal Constitution is not affirmatively raised in the Assignment of Errors to the Supreme Court of Mississippi, and this is true even though the question was raised in the trial court and by Assignment of Errors in this Court. *Hiawassee River Power Co. vs. Carolina-Tennessee Power Co.,* 252 U. S. 341, 40 S. Ct. 330, 64 L. Ed. 601. The federal question must not only have been affirmatively presented to the State Court

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but decision of the federal question must have been necessary to the determination of the case. *Lynch vs. New York ex rel Pierson,* 293 U. S. 52, 55 S. Ct. 16, 79 L. Ed. 191.

At no point in this proceeding, either before the Board of Supervisors of Washington County, the Circuit Court of said County or the Supreme Court of Mississippi, did appellant either directly or indirectly claim or ask any of these bodies to pass on the questions now raised and presented in the Assignment of Errors in this Court. The first time that due process under the Fourteenth Amendment of the Constitution of the United States has been raised in this entire proceeding is in the Supreme Court of the United States, and appellant cannot there raise the question for the first time. *Hiawassee River Power Co. vs. Carolina-Tennessee Power Co.,* supra.

III.

DECISION OF STATE COURT RESTS ON ADEQUATE NON FEDERAL GROUNDS

This Court will not review a decision of a State Court that rests on adequate independent state grounds sufficient to sustain the judgment. *Herb vs. Pitcairn,* 324 U. S. 117, 125, 65 S. Ct. 459, 89 L. Ed. 789; *Williams vs. Kaiser,* 323 U. S. 471, 477, 65 S. Ct. 363, 89 L. Ed. 398; *Lynch vs. New York ex rel Pierson,* supra.

It is respectfully submitted that a reading of the opinion of the Supreme Court of the State of Mississippi will demonstrate, without more, that the decision in this case is merely a construction of the state statutes on ad valorem taxation and involved no federal question whatsoever.

IV.

A SUBSTANTIAL FEDERAL QUESTION IS NOT PRESENTED IN THIS CASE

In practically all interstate transactions there is at least a moment when the interstate movement has ceased and the goods in question have come to rest within a particular state. *Southern Pacific Co. vs. Gallagher*, 305 U. S. 167, 59 S. Ct. 389, 83 L. Ed. 586. In this particular case there was more than a moment's interruption of the interstate movement, there was an actual storage of machinery on appellant's lot in Washington County, Mississippi, for the purpose of saving appellant the expense of reshipment and to repair and recondition the machinery for appellant's next job.

Minnesota vs. Blaisus, 290 U. S. 1, 10, 54 S. Ct. 34, 78 L. Ed. 131:

> "Where property has come to rest within a state, being held there at the pleasure of the owner, for disposal or use, so that he may dispose of it either within the State or for shipment elsewhere, as his interest dictates, it is deemed to be a part of the general mass of property within the state and is subject to its taxing power."

The fact that the machinery might be reshipped in interstate commerce is insufficient within itself to exempt it from state taxation. *Brown vs. Houston*, 114 U. S. 622, 5 S. Ct. 1091, 29 L. Ed. 257. When goods are being held in a depot for the owner's benefit they are taxable in that place, even though they arrive via an interstate shipment and have already been sold so that another interstate shipment will be necessary before delivery is made. *General Oil Co. vs. Crain*, 209 U. S. 211, 28 S. Ct. 475, 52 L. Ed. 754; *Bacon vs. Illinois*, 227 U. S. 504, 33 S. Ct. 299,

57 L. Ed. 615; *Susquehanna Coal Co. vs. South Amboy*, 228 U. S. 665, 33 S. Ct. 712, 57 L. Ed. 1015.

WHEREFORE, appellee respectfully moves that the within appeal be dismissed or that the judgment and decree of the Supreme Court of Mississippi be affirmed.

Respectfully submitted,

JOHN E. STONE
D. H. WAITS
Counsel for Appellee

CERTIFICATE

I, John E. Stone, one of the attorneys of record for the appellee herein, certify that I have on this the fourth day of November, 1954, mailed postage prepaid to Messrs. Philip Mansour, Greenville, Mississippi, and Ernest Kellner, Jr., Greenville, Mississippi, attorneys of record for the appellant, a true and correct copy of the above and foregoing Motion.

This fourth day of November, 1954.

APPENDIX

STATUTES INVOLVED:

Section 9744, *Mississippi Code of* 1942 (*Recompiled*):

TAXES, A LIEN, FROM WHAT DATE. — Taxes, State, county and municipal, assessed upon lands or personal property, shall bind the same, and be entitled to preference over all judgments, executions, incumbrances, or liens whensoever created; and all taxes assessed shall be a lien upon and bind the property assessed, from the first day of January of the year in which the assessment shall be made; and no property shall be exempt from distress and sale for taxes. And it shall not be necessary to the validity of an assessment, or of a sale of land for taxes, that it shall be assessed to its true owner; but the taxes shall be a charge on the land or persoral property taxed, and the sale shall be a proceeding against the thing sold, and shall vest title in the purchaser, without regard to who may own the land or other property when assessed or when sold, or whether wrongfully assessed, either to a person, or to the State, or any county, city, town, or village, or subdivision of either. Provided, however, that the lien for municipal taxes shall be secondary and subordinate to the lien for State and County taxes.

Section 9745, *Mississippi Code of* 1942 (*Recompiled*):

WHAT DATE FIXES LIABILITY TO TAXATION. — All taxable property brought into the state or acquired or held by any person before the first day of January shall be assessed, and taxes thereon paid for the ensuing year, provided, however, that when a municipality is created or the corporate limits thereof extended after the first day of January of any year, it shall have, prior to July first of said year, the full right and power to assess said property and collect taxes for the current

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year to the same extent as if it had been created or limits extended prior to the first day of January of that year. But nothing in this section shall be construed to limit the power of the state to define and declare the situs of particular species of property having no fixed situs at some place in this state.

Section 9747, *Mississippi Code of* 1942 (*Recompiled*):

WHERE PERSONS AND PROPERTY ASSESSED. — Real property shall be assessed in the county, municipality and district where situated; and all tangible personal property shall be assessed in the county, municipality or district in which the same may be on the day the said tax lien takes effect provided it shall be kept in such county, municipality or district permanently, or for the greater part of such current year, and the list thereof may be rendered by an agent of the owner.

All property subject to taxation not above mentioned shall be assessed in the county, municipality and district where the owner resides, and this shall include poll taxes.

Provided, however, that all persons, firms and corporations doing contracting work for drainage districts, for road districts, levee districts, bridge building or any other kind of contracting work, shall have all their personal property used in carrying out such contracts assessed in the county and district where such property is being used on the first day of January of each year.

Section 9752, *Mississippi Code of* 1942 (*Recompiled*):

PERSONAL PROPERTY, HOW TO BE ASSESSED. — The Tax Assessors shall annually assess all personal property subject to taxation in their respective counties. They shall set down in the assessment roll the names

in full of all persons liable to taxation in the county in alphabetical order under each election precinct and each municipality, but firms or persons owning the same class of property, may be listed on the roll together regardless of the alphabetical order. Where there are on the roll more than one person of the same name, the place of residence of each shall be shown, or they shall be otherwise so designated as to identify each and distinguish them. The assessor shall set down each item of peronsal property liable to taxation and the amount of each individual's taxable property shall be totaled and set down in the column provided, opposite his name, and shall so fill out the blanks on the rolls as to disclose clearly and fully all information indicated by said roll.

The tax assessor shall place in the columns provided on the roll the value of the property owned by each taxpayer in every road district, school district, levee district, or other special taxing districts, imposing an ad valorem tax; and he shall truly and correctly add every column on said roll and show in the proper column the total amount of property assessed to every taxpayer and the amount assessed to every taxpayer in each and every road district, school district, or other special taxing district, and the totals of each column from every page shall be carried to the recapitulation on a page or pages in the back of the roll and he shall add said recapitulation and show the total amount of all property assessed in his county and the total for each municipality, school district, road district, levee district, or other special taxing district imposing an ad valorem tax. The assessor shall also show in his recapitulation the correct total of each and every column in the roll.

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Section 9760, *Mississippi Code of* 1942 (*Recompiled*):

CORPORATIONS AND JOINT STOCK COMPANIES, HOW TAXED. — The property of each corporation or joint stock company (whether organized under the laws of this state or any other state or country) shall be assessed and taxed as that of a person; and the laws, providing for the assessment and collection of taxes on the property of persons, shall apply to the assessment and collection of taxes on the property of corporations and joint stock companies; and all shares or certificates of stock issued by any such corporation or joint stock company shall be exempt from taxation and shall not be returned for assessment. The president, secretary or other officer of the same shall render, under oath, the tax list, in its name, of its property, real or personal or both subject to taxation, to the assessor at the same time that persons are required to render their assessments of their property. Its land and tangible personal property shall be assessed and taxed where situated on the first day of January of the year; and the accounts, notes, bonds, shares or certificates of stock, bank deposits, rights, money or other intangible property subject to taxation owned by a corporation or joint stock company organized under the laws of this state shall be assessed and taxed at its domicile; but any such intangible personal property, which would be exempt from taxation according to law, if owned by a person shall be exempt from taxation when owned by a corporation or joint stock company and shall not be returned for assessment. Such intangible personal property owned by a corporation or joint stock company organized under the laws of any state or country other than Mississippi shall be exempt from taxation and shall not be returned for assessment. This section shall not apply to persons,

firms or corporations assessed by the State Railroad Assessors or domestic insurance companies; but the shares or certificates of stock issued by a railroad, sleeping car, express, telephone or telegraph company or a freight car line or a railroad equipment company or a domestic insurance company, shall be exempt from taxation in the hands of the stockholder and shall not be returned for taxation by such stockholder.

Section 9824, *Mississippi Code of* 1942 (*Recompiled*):

TAXES COLLECTED FROM PERSONS REMOVING. — When the assessor shall learn that any person assessed with personal property, or subject to assessment, is about to leave the county or remove the property, he shall notify the tax collector; and when the tax collector receives such notice, or has information, no matter from whom or how derived, that a person liable for personal property taxes, or owning taxable personal property, is about to remove from the county or remove the property, whether the time for collecting taxes by distress and sale of the property has come or not, or whether the property be assessed or not, if the tax collector shall determine that the removal of the person or property will probably result in a failure to collect the personal property, taxes, the said tax collector shall demand bond of the said person, as owner, agent or otherwise, in an amount sufficient to cover all taxes estimated to be due or to become due up to the end of the current year by said person, as the owner, agent or otherwise of the personal property. In default of which bond the said tax collector shall seize sufficient of the property of said person to pay said taxes, and shall hold the same until such time as same may be sold under distress and sale by the tax collector in due course of such procedure; or the tax collector may accept cash in an amount which is

ten percent (10%) in excess of the estimated unpaid taxes; for which cash deposit the tax collector shall be officially responsible. When bond is given as required in this section, the same shall be in the name of the state, and suit may be brought thereon by the tax collector in any court of competent jurisdiction.

No. 488. ANDERSON BROTHERS CORP. *v.* BOARD OF SUPERVISORS OF WASHINGTON COUNTY. Appeal from the Supreme Court of Mississippi. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a properly presented federal question. THE CHIEF JUSTICE and MR. JUSTICE BLACK would dismiss for want of a substantial federal question. *Victor W. Bouldin* for appellant. *John E. Stone* for appellee. Reported below: — Miss. —, 73 So. 2d 105.